

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 JUSE-00 SCA-01 DOTE-00 EB-07

FAA-00 CIAE-00 INR-07 NSAE-00 SS-15 NSC-05 /050 W

----- 096839

P 291741Z APR 75

FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 8925

LIMITED OFFICIAL USE SECTION 01 OF 02 PARIS 10895

E.O. 11652: N/A

TAGS: CPRS, PFOR, FR

SUBJECT: HOLDER/KERKOW EXTRADITION CASE

REF: STATE 86959; PARIS 10263

1. SUMMARY. HIGH JUSTICE OFFICIAL EXPLAINED THAT DECISION DENYING EXTRADITION OF HOLDER AND KERKOW WAS BASED MORE ON PHILOSOPHICAL THAN ON JURIDICAL OR EVIDENTIARY CONSIDERATIONS. HEARING SET JUNE 2 ON FRAUDULENT PASSPORT CHARGES PENDING AGAINST THEM. MEANWHILE FRENCH GOVERNMENT WILL CHARGE THEM WITH HIJACKING WITH VIEW TO TRYING THEM IN FRANCE. WESTERN AIRLINES COULD BRING CIVIL SUIT CONCURRENTLY WITH CRIMINAL PROCEEDINGS. END SUMMARY.

2. CONSUL GENERAL DISCUSSED HOLDER/KERKOW CASE APRIL 28 WITH CHRISTIAN LE GUNEHEC, DIRECTOR OF CRIMINAL AFFAIRS OF JUSTICE MINISTRY IN PRESENCE OF MADAME BACRO, CHIEF OF OFFICE OF EXTRADITION. IN DOING SO HE MADE ABUNDANTLY CLEAR OUR DISTRESS AT COURSE THIS CASE TOOK CULMINATING IN DENIAL OF EXTRADITION REQUEST. IN PARTICULAR, HE NOTED THAT COURT APPEARED TO HAVE GIVEN GREATER WEIGHT TO DEFENSE ARGUMENTS THAN TO OURS, AND HE ASKED WHAT EVIDENCE DEFENSE HAD PRESENTED TO SUPPORT ALLEGATIONS.

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3. LE GUNEHEC SAID HE PERSONALLY REGRETTED OUTCOME,

ALTHOUGH HE WAS NOT AT ALL SURPRISED BY IT. HE EXPLAINED THAT FRENCH GOVERNMENT POSITION HAD TENDED TO BE FAVORABLE TO GENERAL PROPOSITION THAT FUGITIVES MIGHT BE CONSIDERED EXTRADITABLE. OTHERWISE, HE POINTED OUT, THEY WOULD NEVER HAVE BEEN ARRESTED OR BROUGHT BEFORE COURT. HE MENTIONED, TO ILLUSTRATE HIS POINT, THAT IN CASE OF PRESUMED ASSASSINS OF SPANISH PRIME MINISTER, CARRERO BLANCO, FRANCE WOULD NOT EVEN ARREST THEM SINCE CRIME WAS SO OBVIOUSLY POLITICAL.

4. LE GUNEHEC REITERATED THAT AVOCAT GENERAL WAS FREE TO TAKE WHATEVER POSITION HE WISHED BEFORE COURT. HE DECLINED TO SPECIFY EXACTLY WHAT INSTRUCTIONS GOVERNMENT HAD GIVEN AVOCAT GENERAL OTHER THAN IN GENERAL SENSE MENTIONED IN PRECEDING PARAGRAPH WHICH COULD BE INTERPRETED AS BEING MERELY PROCEDURAL. HE DID SAY, HOWEVER, THAT HE BELIEVED DECISION WOULD HAVE BEEN SAME NO MATTER WHAT POSITION AVOCAT GENERAL HAD TAKEN.

5. CONSUL GENERAL WAS UNSUCCESSFUL IN HIS ATTEMPT TO OBTAIN COPY OF WRITTEN BRIEFS PRESENTED BY DEFENSE LAWYERS WHICH LE GUNEHEC MAINTAINED WAS PROPERTY OF COURT. HOWEVER, IT SEEMS MORE THAN LIKELY THAT DEPARTMENT IS CORRECT IN ITS ASSUMPTION THAT EVIDENCE RESTED PRIMARILY ON UNSUPPORTED ALLEGATIONS BY FUGITIVES.

6. LE GUNEHEC TOOK CONSIDERABLE PAINS TO EXPLAIN THAT COURT DECISIONS OF THIS KIND WERE INFLUENCED BY PHILOSOPHICAL CONCEPTS GOING BACK TO FRENCH REVOLUTION. JUDGEMENTS TEND TO BE BASED MORE ON SUBJECTIVE CONSIDERATIONS THAN ON CAREFUL SIFTING OF EVIDENCE. HE ACKNOWLEDGED THAT SOME ASPECTS OF FRENCH JURISTPURDENCEE ARE OUTMODED AND, WHETHER OUTMODED OR NOT, DIFFICULT FOR ANGLO-SAXONS TO UNDERSTAND.

7. FOR PURPOSES OF PROTEST NOTE DEPARTMENT IS PREPARING, WE BELIEVE IT IS UNNECESSARY AND PROBABLY FUTILE TO CONTINUE TO TRY TO OBTAIN WRITTEN EVIDENCE PRESENTED BY DEFENSE. WE THINK IT WOULD SUFFICE MERELY LIMITED OFFICIAL USE

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TO STATE THAT FROM ARGUMENTS PRESENTED ORALLY IN COURT AND FROM TEXT OF COURT DECREE OF APRIL L4 (CONSUL GENERAL OBTAINED COPY FROM LE GUNEHEC AND IS POUCHING IT TO DEPARTMENT UNDER TRANSMITTAL SLIP TO EUR/WE AND L.), IT APPEARS THAT DEFENSE ARGUMENTS RESTED PRIMARILY ON UNSUPPORTED ALLEGATIONS OF FUGITIVES.

8. LE GUNEHEC CONFIRMED THAT HOLDER AND KERKOW ARE

BEING HELD ON FRENCH CHARGES ARISING FROM THEIR USE
OF FAKE PASSPORTS. HE SAID TRIAL HAD BEEN SET FOR

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FM AMEMBASSY PARIS

TO SECSTATE WASHDC PRIORITY 8926

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JUNE 2. MEANWHILE, HE SAID PREPARATIONS WERE UNDERWAY
TO CHARGE THEM WITH HIJACKING WITH VIEW TO BRINGING
THEM TO TRIAL IN FRANCE. HE COULD NOT EXPLAIN WHY
JUSTICE MINISTER HAD TOLD AMBASSADOR (PARIS 10263) THAT
CONSIDERATION WAS ALSO BEING GIVEN TO EXPELLING THEM
FROM FRANCE; IN FACT HE DISCOUNTED SUCH A POSSIBILITY
AND SEEMED QUITE CONFIDENT THEY WOULD IN FACT BE
BROUGHT TO TRIAL HERE.

9. LE GUNEHEC STATED THAT U.S. GOVERNMENT COULD NOT
BE REPRESENTED AT TRIAL. HOWEVER, HE ADDED THAT
AIRLINE COULD PARTICIPATE BY BRINGING CIVIL SUIT (EN
SE CONSTITUANT PARTIE CIVILE). IN SUCH EVENT HE
MENTIONED THAT U.S. GOVERNMENT, IF IT HAD GOOD RELATIONS
WITH WESTERN AIRLINES, MIGHT USE COMPANY AS VEHICLE FOR
BRINGING EVIDENCE BEFORE COURT. IN ANY EVENT, WHETHER
OR NOT AIRLINE BROUGHT SUIT, HE SAID U.S. GOVERNMENT
COULD PRESENT ANY EVIDENCE IT WANTED THROUGH REGULAR
DIPLOMATIC CHANNELS.

10. EMBASSY WOULD BE INTERESTED IN DEPARTMENT'S

REACTION TO PRECEDING PARAGRAPH. IN PARTICULAR, IS IT
REASONABLE TO THINK WESTERN WOULD SUE CONSIDERING
THAT DEFENDANTS HAVE NO MONEY AND THAT AIRLINE WOULD
PRESUMABLY HAVE TO HIRE FRENCH LEGAL COUNSEL?
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Message Attributes

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